

§ 27.5

31 CFR Subtitle A (7-1-04 Edition)

§ 27.5 Initial Notice of Assessment.

The assessing official shall serve an Initial Notice of Assessment by United States mail or other means upon any person believed to be in violation of § 27.3 and otherwise subject to a civil penalty. The notice shall provide the name and telephone number of an agency officer or employee who can provide information concerning the notice and the provisions of this part, and shall include the following:

(a) A specific reference to the provisions of § 27.3 violated;

(b) A concise statement of the facts that support the conclusion that such a violation occurred;

(c) The amount of the penalty proposed, and/or any other proposed civil or equitable remedy;

(d) A notice informing the person alleged to be in violation of § 27.3 that he/she:

(1) May, within 30 days of the date of the notice, pay the proposed civil monetary penalty and consent to each proposed civil or equitable remedy, thereby waiving the right to make a written response under § 27.6 and to seek judicial review under § 27.8:

(i) By electronic funds transfer (EFT) in accordance with instructions provided in the notice, or

(ii) By means other than EFT only with the written approval of the assessing official;

(2) May make a written response within 30 days of the date of the notice asserting, as appropriate:

(i) Why a civil monetary penalty and/or other civil or equitable remedy should not be imposed;

(ii) Why a civil monetary penalty should be in a lesser amount than proposed; and

(iii) Why the terms of a proposed civil or equitable remedy should be modified;

(3) May be represented by an attorney or other representative, provided that a designation of representative signed by the person alleged to be in violation is received by the assessing official; and

(4) May request, within 20 days of the date of the notice, a copy of or opportunity to review any documents and/or other evidence compiled and relied on by the agency in determining to issue

the notice (the assessing official reserves the right to assert privileges available under law and may decline to disclose certain documents and/or other evidence); and

(e) The Initial Notice of Assessment shall also inform the person that:

(1) If no written response is received within the time allowed in § 27.6(b), a Final Notice of Assessment may be issued without a presentation by the person;

(2) If a written response has been made and it is deemed necessary, the assessing official may request, orally or in writing, additional information from the respondent;

(3) A Final Notice of Assessment may be issued in accordance with § 27.7 requiring that the civil monetary penalty be paid and compliance with the terms of any other civil or equitable remedy;

(4) A Final Notice of Assessment is subject to judicial review in accordance with 5 U.S.C. 701 *et seq.*; and

(5) All submissions sent in response to the Initial

Notice of Assessment must be transmitted to the address specified in the notice and include the name, address, and telephone number of the respondent.

§ 27.6 Written response.

(a)(1) A person served with an Initial Notice of Assessment may make a written response explaining why the civil penalty should not be imposed, explaining why a civil monetary penalty should be in a lesser amount than proposed and/or explaining why the terms of a proposed civil or equitable remedy should be modified. The written response must provide:

(i) A reference to and specifically identify the Initial Notice of Assessment involved;

(ii) The full name of the person charged;

(iii) If not a natural person, the name and title of the head of the organization charged; and

(iv) If a representative of the person charged is filing the written response, a copy of the duly executed designation as representative.

(2) The written response must admit or deny each violation of § 27.3 charged